United Nations S/2012/812

Security Council

Distr.: General
7 November 2012

Original: English

France and United Kingdom of Great Britain and Northern Ireland: draft resolution

The Security Council,

Recalling its previous resolutions on the situation in Somalia, in particular resolution 1772 (2007),

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia and *reiterating* its commitment to a comprehensive and lasting settlement of the situation in Somalia,

Recalling its decision in resolution 2036 (2012) to expand the logistical support package for AMISOM to include the reimbursement of certain contingent owned equipment including force enablers and multipliers,

Determining that the situation in Somalia continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* to authorise the Member States of the African Union to maintain the deployment until 7 March 2013 of AMISOM, which shall be authorised to take all necessary measures, in compliance with applicable international humanitarian and human rights law, and in full respect of the sovereignty, territorial integrity, political independence and unity of Somalia, to carry out the following tasks:

(a) To maintain a presence in the four sectors set out in the AMISOM Strategic Concept of 5 January 2012, and in those sectors, in coordination with the SNSF, reduce the threat posed by Al Shabaab and other armed opposition groups in order to establish conditions for effective and legitimate governance across Somalia;

(b) To support dialogue and reconciliation in Somalia by assisting with the free movement, safe passage and protection of all those involved with the peace and reconciliation process in Somalia;

(c) To provide, as appropriate, protection to the Somali authorities to help them carry out their functions of government, and security for key infrastructure;

(d) To assist, within its capabilities, and in coordination with other parties, with implementation of the National Security and Stabilization Plan, in particular the effective re-establishment and training of all-inclusive SNSF;

(e) To contribute, as may be requested and within capabilities, to the creation of the necessary security conditions for the provision of humanitarian assistance;

Please recycle

(f) To protect its personnel, facilities, installations, equipment and mission, and to ensure the security and freedom of movement of its personnel, as well as of United Nations personnel carrying out functions mandated by the Security Council;

2. *Decides* on an exceptional basis and owing to the unique character of the mission to extend the United Nations logistical support package for AMISOM civilian personnel for a further 50 civilian personnel, on a temporary basis to be reviewed in light of the upcoming AU and United Nations strategic reviews, *underlines* the importance of these civilians deploying swiftly to areas recently liberated from Al-Shabaab, in line with the letter dated 18th October from the Chairperson of the African Union Commission to the United Nations Secretary-General;

3. *Requests* the Secretary-General to continue to provide technical, management and expert advice to the African Union in the planning and deployment of AMISOM, through the United Nations Office to the African Union, including on the implementation of the AMISOM Strategic Concept and the AMISOM Concept of Operations;

4. *Requests* the Secretary-General to continue to provide a logistical support package for AMISOM referred to in paragraphs 10 and 11 of resolution 2010 (2011) and paragraphs 4 and 6 of resolution 2036 (2012) for a maximum of 17,731 uniformed personnel until 7 March 2013, ensuring the accountability and transparency of expenditure of the United Nations funds as set out in paragraph 4 of resolution 1910 (2010);

5. *Requests* the African Union to keep the Security Council regularly informed, through the Secretary-General, on the implementation of AMISOM's mandate, and report to the Council, through the provision of written reports, 60 days after the date of this resolution;

6. *Decides* to remain actively seized of the matter.

United Nations S/2012/813

Security Council

Distr.: General
6 November 2012

Original: English

Letter dated 6 November 2012 from the Secretary-General addressed to the President of the Security Council

Pursuant to Security Council resolution 1031 (1995), I have the honour to transmit the forty-second report on the implementation of the Peace Agreement on Bosnia and Herzegovina, covering the period from 21 April to 26 October 2012, which I received from the High Representative for Bosnia and Herzegovina (see annex).

I should be grateful if you would bring the report to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

12-57191 (E) 081112

Please recycle

Annex

Letter dated 31 October 2012 from the High Representative for Bosnia and Herzegovina addressed to the Secretary-General

Pursuant to Security Council resolution 1031 (1995), in which the Council requested the Secretary-General to submit to it reports from the High Representative in accordance with annex 10 to the General Framework Agreement for Peace in Bosnia and Herzegovina and the Conclusions of the London Peace Implementation Conference of 8 and 9 December 1995, I herewith present to you the forty-second report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina. I ask that this report be distributed to the members of the Security Council for their consideration.

This is my eighth report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina on 26 March 2009. The report covers the period from 21 April to 26 October 2012.

Should you or any member of the Security Council require any information beyond what is provided in the attached report or have any questions regarding its contents, I should be pleased to provide you with it.

(*Signed*) Valentin **Inzko**

Enclosure

Forty-second report of the High Representative for Bosnia and Herzegovina

21 April 2012-26 October 2012

Summary

The present report covers the period from 21 April to 26 October 2012. In contrast to the promising trends seen during the last reporting period, the political dynamic in Bosnia and Herzegovina during the reporting period stagnated, reverting to the prevailing trend of the last six years. Not only was there little progress towards closer integration with the European Union, but direct challenges to the General Framework Agreement for Peace, including to the sovereignty and territorial integrity of Bosnia and Herzegovina, intensified significantly.

Bosnia and Herzegovina began 2012 with politicians engaging in political dialogue and reaching agreements necessary for progress. This was reflected in a number of encouraging developments, including the formation of a State Council of Ministers in February rhetorically dedicated to progress on the European Union path, some 15 months after the general elections. I was pleased to reflect cautious optimism regarding those developments in my report of 9 May 2012 to the Security Council (S/2012/307).

Unfortunately, the promising developments of early 2012 have stalled.[a] Having finally formed a State government in February and adopted a 2012 State budget in May, the ruling parties did not get down to work, but immediately commenced a protracted series of power struggles and attempts at government reshuffling at the State and Federation levels, including in some cantons. Against the backdrop of campaigning for local elections, these political manoeuvrings have taken precedence over the pressing needs of citizens and of the country as a whole. Moreover, in their haste to restructure authorities at the Federation level, representatives of some parties ignored or violated applicable legal acts, rules and procedures. While reshuffling within Governments in parliamentary systems occurs around the globe, such initiatives take on a different character when they are carried out without respect for the constitutional framework and the rule of law.

Of more fundamental and growing concern, the leadership of the Republika Srpska has intensified its six-year policy of openly and directly challenging the fundamentals of the Peace Agreement. Statements uttered by senior figures within the Republika Srpska, as well as actions initiated by them to erode the competencies of the State, raise profound doubts about the commitment of the current leadership to the most fundamental aspect of the Dayton Accords, the sovereignty and territorial integrity of Bosnia and Herzegovina.

The issue of open and growing advocacy for the dissolution of Bosnia and Herzegovina by officials from the Republika Srpska, first and foremost by the entity's President Milorad Dodik, is one which I believe deserves the special attention of the international community.

On 7 October 2012, citizens of Bosnia and Herzegovina participated in the country's fifth local elections since the war. Despite a relatively high number of invalid ballots and a degree of controversy surrounding the voter registration and counting in Srebrenica and other municipalities, the process was administered completely by domestic authorities and election observers acknowledged that the electoral process was generally conducted in line with democratic standards. Citizens of Mostar were unable to vote on 7 October owing to the ongoing failure of authorities to implement a 2010 ruling of the Constitutional Court of Bosnia and Herzegovina on the city's electoral system. The Office of the High Representative is facilitating discussions between political parties to enable the holding of elections in Mostar as soon as possible.

During the reporting period, the authorities in Bosnia and Herzegovina did little to implement the outstanding requirements of the five objectives and two conditions necessary for the closure of the Office of the High Representative.[b] The suspension of the Supervision of Brcko District did, however, constitute an important step towards fulfilling that objective, while a landmark ruling by the Constitutional Court of Bosnia and Herzegovina provided a legal precedent and outlined guiding principles for the resolution of the State and defence property objectives.

On the economic front, the country is faced with a deteriorating fiscal situation, poor growth prospects, high unemployment and accompanying social problems.

Through their continued presence, the European Union and NATO military missions in Bosnia and Herzegovina have both continued to reassure citizens that the country remains safe and secure despite the difficult political situation.

---

[a] This was also reflected in the European Commission's annual progress report on Bosnia and Herzegovina: "The political consensus that had emerged was lost and progress on the European Union agenda stalled". The report also noted that, "[a] shared vision by the political representatives on the overall direction and future of the country and its institutional set-up remains to be agreed as a matter of priority. In order for such a vision to materialize, the political representatives of Bosnia and Herzegovina need to anchor the European Union agenda at the heart of the political process and translate political agreements into concrete action". Commission staff working document, Bosnia and Herzegovina, 2012 progress report.

[b] At its meeting on 26 and 27 February 2008, the Steering Board of the Peace Implementation Council set five objectives and two conditions for closure of the Office of the High Representative. The five objectives were: an acceptable and sustainable resolution of the issue of apportionment of property between the state and other levels of government; acceptable and sustainable resolution of defence property; completion of the Brcko Final Award; fiscal sustainability; and entrenchment of the rule of law. The two conditions were: the signing of the Stabilization and Association Agreement and "a positive assessment of the situation in Bosnia and Herzegovina by the Steering Board of the Peace Implementation Council based on full compliance with the Dayton Peace Agreement".

I. Introduction

1. This is my eighth report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina. It provides a narrative description of progress made towards attaining the goals outlined in previous reports, registers factual developments, logs relevant citations relating to the reporting period and provides my assessment of the implementation of key areas falling under my mandate, including the objectives and conditions which must be met before the Office of the High Representative can close. I have focused my efforts on facilitating progress in those areas, in line with my primary responsibility to uphold the civilian aspects of the General Framework Agreement for Peace, while also encouraging progress on the five objectives and two conditions for the closure of the Office and working to preserve reforms undertaken to implement the Peace Agreement.

2. While my energies are focused solely on my mandate under annex 10 of the General Framework Agreement for Peace and relevant Security Council resolutions, my Office fully supports the efforts of the European Union to help Bosnia and Herzegovina move along the path towards closer integration with the European Union. My Office and that of the Special Representative of the European Union are working in close cooperation on the ground to create new synergies wherever possible, in accordance with our respective mandates.

II. Political update

General political environment

3. During the reporting period the country was affected by two major political developments and a worsening trend. The first set of developments revolved around the efforts of the Social Democratic Party (SDP) to expel the Party for Democratic Action (SDA) from governing coalitions at the cantonal, Federation and State levels, which created significant gridlock and contention. The second was the critical reaction of officials coming from the Republika Srpska to the vote in the General Assembly on the Syrian Arab Republic by the Permanent Representative of Bosnia and Herzegovina to the United Nations. The worsening trend was the increasing pro-dissolution, pro-independence rhetoric, adopted by the representative of the Republika Srpska, accompanied by challenges to State judicial institutions, the Armed Forces of Bosnia and Herzegovina, and other responsibilities of the State under the constitution, which is contained in annex IV to the General Framework Agreement for Peace.

4. The SDA vote against the adoption of the State budget on 31 May triggered a move by the SDP to expel it from all levels of government and to establish new majority coalitions in alliance with the Party for a Better Future of Bosnia and Herzegovina and the two largest predominantly Croat parties (the Croatian National Community of Bosnia and Herzegovina (HDZ Bosnia and Herzegovina) and the Croatian National Community 1990 (HDZ 1990)). Although SDP was able to remove SDA from Government in four cantons and a few municipalities, it lacked the parliamentary votes to do so entirely at either the State or Federation levels for most of the reporting period. As SDP and SDA fought for dominance, the work of the parliament came to a standstill and little legislation was passed. The stagnation deepened as all parties competed for votes in the run-up to the October local

elections. In its rush to eject SDA and the Croatian Party of Rights from the positions of speaker and deputy speaker of the House of Representatives of the Federation Parliament, the SDP-led majority convened and held a session of parliament in disregard for the rules of procedure and the constitution. This was subsequently confirmed in a ruling of the Constitutional Court of the Federation.

5. The efforts of SDP to remove SDA from the State-level Council of Ministers ultimately came to fruition on 22 October, with the Parliamentary Assembly of Bosnia and Herzegovina voting to remove two SDA Ministers and one Deputy Minister from the Council of Ministers. According to the law on Council of Ministers, deputies are to temporarily take over these ministerial posts until replacements can be appointed.

6. In parallel to these developments, parties from the Republika Srpska sought to remove the Minister for Foreign Affairs (who is also the president of SDP) from his position, following a controversial vote in support of the General Assembly resolution on Syria on 4 August. Following the vote, the President of the Republika Srpska and the Serb member of the Presidency of Bosnia and Herzegovina claimed that the Minister for Foreign Affairs had acted unconstitutionally by instructing the representative of Bosnia and Herzegovina to the United Nations to vote in favour of the resolution at the General Assembly, without proper prior consultation within the three-member Presidency of the country. Although the Chair of the Presidency of Bosnia and Herzegovina had in fact authorized the vote, officials of the Republika Srpska focused their criticism on the Minister for Foreign Affairs and initiated a process for his removal through the national Parliamentary Assembly.

7. These events have played out against a backdrop of increasingly vitriolic and nationalist rhetoric from the most senior politicians and party officials in Republika Srpska, including State-level officials from the Republika Srpska. Dominating this rhetoric are open predictions and advocacy of State dissolution and the independence of the Republika Srpska. This issue is covered in greater detail in the section entitled "Challenges to the General Framework Agreement for Peace and Rollback of Reform" (paras. 22-28 below).

8. In the Federation of Bosnia and Herzegovina, the two leading Croat parties (HDZ Bosnia and Herzegovina and HDZ 1990) have, on occasion, called for the creation of a Croat-majority federal territorial unit.[1]

Decisions of the High Representative during the reporting period

9. During the reporting period, I refrained from the direct use of my executive powers, except in order to lift two bans imposed by the previous High Representative.

[1] For example, the President of the HDZ Bosnia and Herzegovina was quoted, in an interview on 26 September, as advocating the division of Bosnia and Herzegovina into four federal units and explaining that Croat territorial autonomy was a rational and sensible solution that would provide for the normal functioning of a European Bosnia and Herzegovina. In a 24 October interview on TV1, the President of HDZ 1990 argued that a solution to the political crisis in Bosnia and Herzegovina will only be reached when Bosniaks accept the idea of a third entity with a Croat majority and allow Croats to decide what is best for themselves.

Five objectives and two conditions for closure of the Office of the High Representative

Progress on objectives

10. During the reporting period, the authorities of Bosnia and Herzegovina took no concrete steps to meet any of the objectives for closure of the Office of the High Representative. At the time of writing, none of the legal acts foreseen in the 9 March multi-party "Agreed Principles of Distribution of Property" had been adopted. A recent State property ruling by the Constitutional Court of Bosnia and Herzegovina has laid out guiding principles for the resolution of the State property issue.

11. I closed the Brcko Final Award office on 31 August in parallel with the decision by the Brcko Supervisor to suspend the exercise of his supervisory functions, a move that was endorsed by the Peace Implementation Council in its communiqué of 23 May.

State property

12. On 13 July, the Constitutional Court of Bosnia and Herzegovina adopted a landmark ruling in a case regarding the review of the constitutionality of the Law on the Status of State Property Situated in the Territory of Republika Srpska and under the Disposal Ban (Republika Srpska State Property Law). Pursuant to the Court's decision, the Republika Srpska State Property Law ceased to be in force on 19 September 2012.

13. As previously reported, the National Assembly of Republika Srpska adopted the Republika Srpska State Property Law in September 2010, unilaterally imposing the principal of division of public property between the different levels of government on a purely territorial basis and, as such, jeopardized the possibility of a negotiated settlement. In order to protect the ownership interests of Bosnia and Herzegovina and other levels of government from the application of legal acts by which new rights of ownership might be established over State property, and to preserve the chance of a negotiated settlement of the issue, on 6 January 2011, I issued the Order Suspending Application of the Law on the Status of State Property Situated in the Territory of Republika Srpska and under the Disposal Ban,[2] which remained in effect until a final decision of the Constitutional Court of Bosnia and Herzegovina entered into force.

14. The decision by the Constitutional Court is far reaching. The Court held that the Republika Srpska State Property Law, which transfers property to the Republika Srpska over which Bosnia and Herzegovina is titleholder, falls outside the competence of the entity legislature and is therefore unconstitutional. It explains that according to its Constitution, Bosnia and Herzegovina is the titleholder of the State property subject to the disputed law of the Republika Srpska, that is, public property of the former socialist republic of Bosnia and Herzegovina and property covered by the Agreement on Succession Issues adopted in 2001. The decision also rules that the competence to regulate such property is the exclusive responsibility of the Parliamentary Assembly of Bosnia and Herzegovina, which, nevertheless, must take into consideration the interests and needs of the entities. The Court also

[2] *Official Gazette of Bosnia and Herzegovina*, No. 1/11.

clarified that State property encompasses broad categories,[3] and acknowledged the formation of the State Property Commission by the Council of Ministers of Bosnia and Herzegovina was a positive mechanism by which "both the entities and the Brcko District of Bosnia and Herzegovina may articulate their respective interests" regarding State property. The Court also acknowledged my role in assisting in this process by banning the temporary disposal of said property. As the State property issue remains unresolved, the Court concluded that there is a "true necessity and positive obligation of Bosnia and Herzegovina to resolve this issue as soon as possible".

15. The decision of the Court has implications for the agreement concluded by political leaders on 9 March on these issues, which must now be re-evaluated to ensure that its implementation is consistent with the national Constitution, as interpreted by the decision of the Court.

Defence property

16. The decision of the Constitutional Court of Bosnia and Herzegovina on State property described above will have a bearing on the ongoing efforts to resolve the issue of immovable prospective defence property. While the decision itself did not effect implementation of the objective of the Steering Board of the Peace Implementation Council of an acceptable and sustainable resolution of defence property, nor indeed NATO's condition for the activation of the Membership Action Plan, it will undoubtedly have an impact on the issue both legally and politically. Despite the ruling of the Constitutional Court and the ongoing work being done to finish the accompanying technical aspects of defence property, the fundamental political disagreement between the parties over whether the State of Bosnia and Herzegovina can own property at all remains an obstacle to resolving this issue. My Office stands ready to assist all relevant parties in finding a sustainable solution to implement an agreement on immovable prospective defence property in line with the decision of the Constitutional Court.

17. On 18 July, the Government of Republika Srpska adopted a conclusion that sought to amend the 2008 movable defence property agreement transferring the ownership of all arms, weapons and explosives in the possession of the Armed Forces of Bosnia and Herzegovina from the entities to the State. The proposed amendment would allow surplus arms, weapons and explosives to be sold, destroyed or donated by each entity rather than by State-level authorities. This would constitute a significant challenge to the defence reform process (including the Law on Defence), and would call into question the already completed objective of an acceptable and sustainable resolution to this aspect of defence property.[4] On a related note, according to official State figures, only 360 tons of surplus arms, weapons and explosives had been destroyed by early September, while 14,156 tons of surplus arms, weapons and explosives had not been destroyed.

---

[3] This includes movable and immovable objects in the hands of public authorities and can include a public good (seawater and seabed, river water and riverbeds, lakes, mountains and other natural resources, public transport networks, traffic infrastructure, etc.), property that, by its nature, serves all people in the country. Such property reflects the statehood, sovereignty and territorial integrity of Bosnia and Herzegovina.

[4] Ownership of some portions of movable defence property was also impacted by the decision of the Constitutional Court of Bosnia and Herzegovina on State property.

Brcko District

18. Having discussed the issue intensively over the last year, the Steering Board of the Peace Implementation Council, as reflected in its communiqué of 23 May, endorsed my decision to close the Brcko Final Award office by 31 August, in parallel with the Supervisor's decision to suspend the exercise of his functions as of the same date. The Steering Board also recognized the intent of the Supervisor to exercise his functions under paragraphs 13 and 67 of the Brcko Final Award when the conditions set out in those provisions had been met. As of 31 August, the Brcko office was closed concurrent with the issuing of a Supervisory Order Regulating the Status of Legal Acts. The decisions explicitly set forth in the communiqué of 23 May have therefore been carried out. Having taken those steps, the Supervisor, who resides in Sarajevo, no longer intends to intervene in the day-to-day affairs of the District, although he has retained full authority to resume, at his own discretion, exercising such authority if warranted by circumstances.

19. On 16 May, the Federation Parliament adopted a Declaration on Non-Acceptance of Termination of the Supervision for Brcko District of Bosnia and Herzegovina, claiming that conditions had not been met to end the supervisory regime and that the Republika Srpska had not met its obligations under the Final Arbitral Award, the Brcko District statute and amendment I to the Constitution of Bosnia and Herzegovina. On 15 June, the Federation Government sent a note to the Brcko Arbitral Tribunal declaring its non-acceptance of the end of Brcko supervision and requesting an opinion as to whether the Steering Board of the Peace Implementation Council would be in compliance with the Final Award if it were to take a decision to terminate supervision before the conditions for closure of the Tribunal were met.

20. The ongoing predictions of the dissolution of Bosnia and Herzegovina by the Republika Srpska require particular attention in respect to Brcko, given the District's strategic position. For instance, a recent statement by the President of the Republika Srpska implied that Brcko would accompany the Republic in separating from Bosnia and Herzegovina: "We send the message that there will be no abolishing of the Republika Srpska. Bosnia and Herzegovina should be abolished. What do we need it for when we get no use out of it? The Republika Srpska and Brcko can manage on their own".[5] Such rhetoric, when considered in light of the continued use of maps by the authorities of the Republika Srpska showing Brcko to be part of the Republika Srpska and other ambiguous signals from Banja Luka regarding Brcko will continue to require close scrutiny by the international community.

21. As safeguards against potentially destabilizing moves related to Brcko, the jurisdiction of the Arbitral Tribunal has been retained and will remain until the Tribunal has been notified of the fulfilment of conditions of paragraphs 13 and 67 of the Final Award. In addition to the Arbitral Tribunal, the High Representative retains the mandate, the authority and all necessary instruments to uphold the civilian aspects of the Dayton Peace Agreement throughout Bosnia and Herzegovina, including in Brcko District. In addition, the Constitutional Court, as well as the Supervisor himself, have the authority to defend the progress achieved in Brcko if necessary.

[5] The President of the Republika Srpska, Milorad Dodik, at a campaign rally in Brcko, 27 September 2012.

Challenges to the General Framework Agreement for Peace and Rollback of Reform

22. The General Framework Agreement for Peace and the steps towards its implementation have ensured peace and security in Bosnia and Herzegovina over the last 17 years, and attempts at undermining its foundations and rolling back reforms undertaken to implement it require the serious attention of the international community.

23. The reporting period saw intensified and provocative rhetoric from the Republika Srpska, disputing and questioning the existence of the State of Bosnia and Herzegovina, advocating its dissolution and challenging the functionality of the State and its responsibilities under its Constitution. The President of the Republika Srpska Milorad Dodik, has been the most frequent — although certainly not the sole — proponent of State dissolution. For example, among many problematic statements, he recently said that, "Bosnia and Herzegovina is a rotten State that does not deserve to exist. Bosnia and Herzegovina constantly confirms its inability to exist ... Bosnia and Herzegovina is definitely falling apart and it will happen sooner or later. As far as I am concerned, I hope to God it dissolves as soon as possible".[6]

24. The rhetorical campaign for secession has included repeated advocacy for the right of the Republika Srpska to self-determination, and frequent statements predicting the dissolution of Bosnia and Herzegovina and the independence of the Republika Srpska.[7] Senior officials of the Republika Srpska have publicly acknowledged deliberate obstruction of Dayton institutions,[8] asked for a separate path for the Republika Srpska

[6] Radio and television of Bosnia and Herzegovina, 30 September 2012.

[7] "I am completely convinced that it [Republika Srpska] will one day arise as an independent country", Milorad Dodik, *Nezavisne Novine*, 4 October 2012. "Bosnia and Herzegovina will fall apart before it goes bankrupt. What is bankruptcy in a constitutionally unfinished country other than collapse?", Finance Minister of Bosnia and Herzegovina, Nikola Spiric, *Glas Srpske*, 21 August 2012. "Perhaps this is the road which has been marked and it will be concluded at the end that a mouse and a cat cannot live together and that dissolution is the only solution for Bosnia and Herzegovina", Nikola Spiric, *Nezavisne Novine*, 13 August 2012. "It is naïve to believe that foreigners will keep Bosnia and Herzegovina from disintegrating in years to come", President of the Republika Srpska, interview of 29 April 2012. "We basically do not like any Bosnia, neither the one constructed by Bosniaks, nor the one by foreigners. Bosnia and Herzegovina is like a transit station on our way", President of the Republika Srpska, interview of 9 June 2012. "Whatever may happen, the dissolution of Bosnia and Herzegovina is inevitable ... Given that the hour of Bosnia and Herzegovina's disintegration is nearing, the positive and capable intuition of one person is no longer enough. It must be transformed into a scientifically and professionally developed system. Or to put it differently, a council (office, commission or similar) needs to be formed to manage the process of independence for the Republika Srpska", Vice-President of the Republika Srpska, Emil Vlajki, *Nezavisne Novine*, 13 August 2012.

[8] "We let the Court of Bosnia and Herzegovina and Prosecutor's office remain as they are this year because of some other priorities. However, in one of the following years we will block all funds for the work of the Court and Prosecutor's office", President of the Republika Srpska, *BNTV*, 23 April 2012.

towards membership in the European Union[9] and asserted that it is up to the Republika Srpska to decide whether or not Bosnia and Herzegovina exists.[10]

25. I am also concerned by continued assertions, contrary to the Constitution of Bosnia and Herzegovina, that the entities are in fact states.[11] The leading politicians of the Republika Srpska have on numerous occasions referred incorrectly to Bosnia and Herzegovina as a "State union" in the context of advocating for its dissolution.[12]

26. A new element in the rhetorical campaign for secession has been the fact that the number of officials mentioning future dissolution has broadened to include not only more senior officials of the Republika Srpska, but also State-level officials from the Republic, including the Minister of Finance of Bosnia and Herzegovina, Nikola Spiric, and a Serb member of the Presidency of Bosnia and Herzegovina, Nebojsa Radmanovic.

27. As has been the case in the past, the campaign has also included regular political attacks against the State institutions that were established to exercise responsibilities of the State under the Constitution and/or to safeguard the rule of law, sovereignty, territorial integrity and constitutional order of the country (the Constitutional Court, the State Court and the Prosecutor's Office, the High, Judicial and Prosecutorial Council and the State Investigations and Protection Agency (SIPA).[13] These constant attacks have weakened these increasingly fragile, yet vital institutions.

---

[9] "The Republika Srpska is institutionally and politically the most organized structure in Bosnia and Herzegovina to implement requests of the European Union. I am sure the European Union will revisit Bosnia and Herzegovina's path towards the European Union because I do not expect the Federation of Bosnia and Herzegovina to catch up with the Republika Srpska in the integration process ...", Minister of Regional Cooperation of the Republika Srpska, Zeljka Cvijanovic, *EuroBlic*, 13 August. "We have a mechanism that enables us to make the first step towards the independence of the Republika Srpska — the path to the EU!", Executive Secretary of the Independent Social Democratic Party (SNSD), Rajko Vasic, *Press RS*, 24 July 2012.

[10] "The reality is the Republika Srpska. You will return what you had taken from us! Not today?! Tomorrow then! Not ever? Then there will be no Bosnia!", President of the Republika Srpska, *Vecernje Novosti*, 9 August 2012. "Hence, the way out is to return to the original Dayton, or to go separate ways. If there is goodwill of both the local politicians and the international community, both one and the other can be done peacefully, at the table", *Politika*, 1 October 2012.

[11] "Republika Srpska, according to its competencies, is indeed a state in the framework of the complex community of Bosnia and Herzegovina", Aleksandra Pandurevic, SDS member of the Parliamentary Assembly of Bosnia and Herzegovina, 15 August 2012.

[12] "Bosnia and Herzegovina is a State union composed of two entities", President of the Republika Srpska, *BNTV*, 15 June. "Bosnia and Herzegovina is not a State in spite of press releases. The question is if it is a State union. Bosnia and Herzegovina is just a structure and this is the best explanation of the current shapeless condition of this internationally recognized area between Serbia and Croatia", Executive Secretary, Rajko Vasic, SRNA, 28 July. "Bosnia and Herzegovina is constantly demonstrating its chronic inability to exist and survive as a State and the question is not whether Bosnia and Herzegovina exists but how we could dissolve in a peaceful way", President of the Republika Srpska, *TANJUG*, 2 September 2012.

[13] For example, the President of the Republika Srpska said that "the Constitutional Court of Bosnia and Herzegovina is a political court that has lost legitimacy for any fair decisions a long time ago" *Nezavisne Novine*, 1 October 2012. He also threatened that the Republika Srpska will unilaterally ignore State judicial institutions: "the Republika Srpska is ready to reject the Court of Bosnia and Herzegovina and the Prosecutor's Office if the structured dialogue on justice fails", *Nezavisne Novine*, 18 September 2012.

28. Abiding by the Dayton Agreement, and in particular the constitutional framework and the rule of law, is a prerequisite and an instrument for long-term stability. Conversely, given Bosnia and Herzegovina's recent troubled history, challenges to the fundamentals of the Peace Agreement and the Constitution directly undermine the stability of the country and all well-intentioned efforts to reintegrate the country and to take it forward. Given the seriousness of these efforts to negate or undermine vital aspects of the Peace Agreement, I believe this matter deserves the special attention of the Security Council.

State-level institutions of Bosnia and Herzegovina

Presidency of Bosnia and Herzegovina

29. Despite disputes within the Presidency related to Kosovo, Brcko and the vote on the Syrian Arab Republic in the General Assembly, the Presidency of Bosnia and Herzegovina held five sessions during the reporting period and adopted decisions related to the budget, defence and foreign policy.

Parliamentary Assembly of Bosnia and Herzegovina

30. During the reporting period, the legislative work of the Parliamentary Assembly was brought to a virtual standstill by inter-party conflicts that began in May with SDP-led efforts to expel the SDA from State government. Additional complicating factors included subsequent Serbian Democratic Party (SDS) moves to eject the Deputy Speaker of the House of Representatives and SNSD calls for the removal of the Minister for Foreign Affairs. The run-up to the 7 October municipal elections also saw a hardening of positions on national issues, which became a central part of the parties' municipal election campaigns. As a result, the Parliamentary Assembly adopted only two new laws[14] and six sets of amendments to existing legislation during the reporting period. Since January 2012, the Parliament has adopted just four new laws.

31. On 22 October, some five months after the SDP first initiated government reshuffling efforts at the State level, the House of Peoples of Bosnia and Herzegovina ultimately confirmed the decision to remove the SDA Ministers of Security and Defence, as well as the Deputy Minister of Finance from government. Until such time as new Ministers are appointed, the law prescribes that their duties should be performed by their respective deputies.

32. On 23 October, the SNSD withdrew its request for the removal of the Minister for Foreign Affairs from the agenda of the House of Representatives, ostensibly on the grounds that there was no clear majority in favour of the move. On the same day, the House of Representatives also voted to remove the SDP Deputy Speaker, with plans to appoint a new speaker on 6 November. SDA alleged that political or financial deals, many at the expense of the State, motivated the reconciliation between the leaders of SNSD and SDP.

[14] *Law on Customs Tariff* (adopted on 19 July) and *Law on Budget of Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina in 2012* (adopted on 31 May).

33. Deputies in the Parliamentary Assembly from the Republika Srpska challenged the independence and existence of the Court and Prosecutor's office on a number of occasions, repeatedly rejecting the report on information on the work of the Prosecutor's Office on the basis of relatively minor issues and proposing a law, which did not pass, that would have done away with both institutions.

Council of Ministers of Bosnia and Herzegovina

34. In spite of the protracted political crisis, the Council of Ministers continued to meet regularly, holding 18 sessions during the reporting period. The Council of Ministers passed only four new laws for parliament to consider,[15] along with seven sets of amendments to existing laws. The Council of Ministers made several appointments and adopted various bylaws as well as dozens of decisions, including proposals for bilateral agreements and decisions on the ratification of international treaties.[16]

35. Economic and other challenges posed by Croatia's accession to the European Union have increasingly been the focus of the agenda of the Council of Ministers. Thematic sessions of the Council of Ministers on 26 July and 16 October focused on fulfilling the country's obligations to the European Union for 2012.

Electoral process

36. On 7 May, the Central Election Commission announced countrywide local elections for 7 October. The Commission also decided to postpone the election for the Mostar City Council.

37. The working group tasked with preparing amendments to three important State-level laws related to the electoral process submitted proposed amendments to the Law on Conflict of Interest and the Law on Political Party Financing to the Parliamentary Assembly on 15 May. The group could not agree on changes to the Election Law related to the Mostar City Council. The proposed changes to the Law on Conflict of Interest would have softened sanctions prescribed by the existing law, but they were rejected by the Parliament. Proposed changes to the Law Political Party Financing clarified provisions on prohibited activities and financial audits, but weakened sanctions for violations. They were adopted by the House of Representatives in July and await adoption in the House of Peoples.

Constitutional reform

38. During the reporting period, there has been no progress in implementing the European Court of Human Rights ruling in the *Sejdic-Finci vs. Bosnia and Herzegovina* case. Parties failed to submit a joint proposal implementing the ruling by

[15] Proposal of the Law on Foundations, Proposal of the Law on Anti-Mine Actions in Bosnia and Herzegovina, Proposal of the Law on Free Legal Aid and Proposal of the Law on Associations.

[16] On 22 June, the Council of Ministers adopted an informational note prepared by the Ministry of Foreign Affairs on the individual partnership programme of Bosnia and Herzegovina for 2012 as a cooperation mechanism between Bosnia and Herzegovina and NATO, as well as the individual partnership programme of Bosnia and Herzegovina for 2012. On 12 July 2012 it adopted a long overdue rule book on the internal organization of the Agency for Prevention of Corruption and Coordination in the Fight against Corruption and the Code of Conduct for the staff of the Agency. The rulebook defines the organizational and staffing aspects of the Agency. Its adoption will allow the Agency to proceed with the recruitment of new staff.

the 31 August deadline agreed to in the European Union road map by political leaders[17] at a meeting in Brussels on 27 June with the European Commissioner for Enlargement and European Neighbourhood Policy. While HDZ Bosnia and Herzegovina/HDZ 1990, SNSD/SDS and SDA formally submitted separate proposals to the Parliamentary Assembly in August, they failed to create a harmonized single proposal. The proposals differed over the method of selecting the members of the Presidency of Bosnia and Herzegovina and the composition of the House of Peoples.

Republika Srpska

39. Republika Srpska authorities continue to pursue a policy that is, as the President of the Republika Srpska has frequently expressed in public, aimed at rolling back previously agreed steps that have been taken to implement the Peace Agreement and at moving State responsibilities to entity institutions. The most recent and troubling of these is an initiative sent by the President to the Republika Srpska National Assembly attempting to create conditions that would unilaterally force the dissolution of the Armed Forces of Bosnia and Herzegovina.

40. The executive and legislative authorities of the Republika Srpska continued to meet regularly during the reporting period and the National Assembly of the Republika Srpska adopted 33 new pieces of legislation.

41. On 10 July, the National Assembly of the Republika Srpska abolished its Law on Population, Household and Apartment Census 2011, which foresaw a separate census for the Republika Srpska, and adopted the Law on Organization and Implementation of Population, Household and Apartments Census 2013, following the adoption of the same law at the State level. I commend the authorities of the Republika Srpska for having taken this step.

42. On 26 April, the Council of Peoples of the Republika Srpska failed to adopt amendments to its Constitution attempting to regulate, inter alia, abolishment of the death penalty, harmonization of the Constitution with the European Convention on Human Rights, local self-governance and a transfer-of-competencies mechanism. The amendments were opposed by the Bosniak caucus in the absence of a compromise over guaranteed representation of Bosniaks and others in the city council of Banja Luka.

43. On 6 June, the National Assembly of the Republika Srpska appointed five new judges to the Constitutional Court of the Republic, including the then sitting Minister of Justice of the Republika Srpska (who was subsequently elected President of the Court) and a former member of the main board of SNSD. These appointments were criticized by the opposition as an effort to politicize the court.

Srebrenica

44. Events surrounding the conduct of the municipal elections in Srebrenica in October 2012 were a major issue during the reporting period. Bosniak-majority parties had advocated the use of my executive mandate to extend the previous special election arrangement for Srebrenica, whereby all those who lived in

[17] These were the leaders of the HDZ 1990, HDZ Bosnia and Herzegovina, the Union for a Better Future of Bosnia and Herzegovina (SBB Bosnia and Herzegovina), SDA, SDP, SDS and SNSD.

Srebrenica in 1991, regardless of where they live today, would be able to vote in the Srebrenica local elections. They argued that the genocide perpetrated in Srebrenica justified such an exception. I raised this matter with the Steering Board of the Peace Implementation Council on several occasions, and it was clear that there was virtually no support for such a move (with the exception of Turkey). I encouraged the parties to find a mutually acceptable solution that would contribute to reconciliation, while taking into account that genocide was perpetrated in and around Srebrenica, as adjudicated by international and domestic courts.

45. In May, a coalition of Bosniak civil groups organized a registration campaign to encourage former Srebrenica residents to register either as residents, or as absentee voters. By 24 August (the cut-off date for registration of regular voters for the October local elections) over 2,100 additional people registered their residence in Srebrenica. According to the campaign, an additional 2,500 displaced persons registered to vote in Srebrenica from their place of current domicile.

46. Complaints of irregularities marked the process leading up to the election. Serb parties claimed that people registered residence in Srebrenica who have no intention of living there, while Bosniak parties and organizations claimed the Republika Srpska police discriminated against Bosniaks during the registration process and made it unduly complex for them. Bosniak parties also claimed that the electoral register in Srebrenica contains the names of a large number of Serbs who have long ago resettled in Serbia and other countries.

47. The elections themselves were conducted without major incident, although voting at one polling station had to be suspended briefly. The announced results, which are subject to appeal, suggest that the Bosniak candidate won the mayoral elections, while the seats in the Municipal Assembly are to be evenly distributed (11 to each ethnic caucus plus one reserved for the representative of minorities).

48. The annual commemoration of the genocide, held on 11 July 2012, proceeded in an orderly fashion, as 520 recently exhumed victims were laid to rest.

Denial of genocide in Srebrenica

49. I am concerned by the continuing contention of senior officials of the Republika Srpska that genocide, which has been confirmed by rulings from the International Court of Justice and the International Tribunal for the Former Yugoslavia and other courts, was not committed in Srebrenica in 1995. At an election rally in Srebrenica, the President of the Republika Srpska declared, "I claim that genocide was not committed here!"[18] He also continued to repeat this statement after the elections.[19] I am also concerned by similar statements made by Serbia's new President, Tomislav Nikolic, who told the Italian daily *Corriere della Sera* on 8 October that "Genocide didn't happen in Srebrenica ... not a single Serb admits

[18] *BNTV*, 24 September 2012.

[19] In an interview to Belgrade-based television station *B-92* on 15 October, the President of the Republika Srpska, Milorad Dodik, again denied that genocide took place in Srebrenica. "Neither the Republika Srpska nor Bosnia and Herzegovina are on trial in The Hague, nor can verdicts in those trials have any outcome. They can have only a speculative outcome. Just like there has been an attempt to impose the talk about genocide on the Republika Srpska and the Serb people, which did not occur and we say that publicly and we do not want to accept it."

genocide in Srebrenica, and neither do I".[20] I welcome those voices, including from the United States Government and the highest levels of the European Union in Brussels, who have joined me in condemning these statements and the damage they do to the reconciliation process inside Bosnia and Herzegovina and regionally.

Federation of Bosnia and Herzegovina

50. During the reporting period, the Federation Parliament adopted only three laws and two decisions, four of which were mandated by the International Monetary Fund (IMF) as a condition for opening a new stand-by arrangement.

Efforts led by the Social Democratic Party to reconstruct Federation authorities

51. Sustained political deadlock dominated politics in the Federation during the reporting period. In parallel to the attempt to remove SDA from the State-level Council of Ministers, SDP undertook to remove their previous coalition partners (SDA and the Croatian Party of Rights of Bosnia and Herzegovina (HSP)) from the Federation authorities and bring the two predominantly Croat parties (HDZ Bosnia and Herzegovina and HDZ 1990) and the primarily Bosniak SBB Bosnia and Herzegovina into the ruling coalition. During the ensuing political disputes, a number of actions were taken that raised serious issues under the Federation Constitution. On a number of occasions I had to remind the parties of their obligation to respect the rule of law and to leave the resolution of their disputes to the competent domestic authorities.

Federation Government dispute

52. On 22 June, at the behest of SDA, the Federation President (from the HSP party) issued a decision accepting the resignation of the Minister for Spatial Planning. The Minister, who had earlier switched allegiance from SDA to SDP, disputed the claim that he had in fact resigned. His switch to SDP was significant as it enabled SDP to secure a majority in the Federation Government. The initial controversy centred around whether the President had in fact accepted a blank resignation, which the Minister was reported to have signed at the behest of his party when he first took up office. This practice is reportedly common in Bosnia and Herzegovina.

53. At a Government session held on the same day, with the participation of the Minister whose resignation the President had accepted, eight SDP Ministers and the Minister for Spatial Planning voted to launch personnel changes in a number of public companies of the Federation.[21] Members of SDA serving in the Government insisted that the Government and the Prime Minister must respect the decision of the Federation President on the above-mentioned resignation, meaning that the previous Minister for Spatial Planning could not legally participate in the Government

[20] Nikolic's statement came on the heels of Dodik's denial of genocide at a campaign rally in Srebrenica itself on 24 September.

[21] Together with the Minister who had switched party allegiances, 9 out of 17 members of the Government voted for the removal of supervisory boards, the other eight members (from HSP, Peoples Party for Work and Progress (NSRZB) and SDA) having walked out. Without the presence of the disputed Minister, only seven ministers and the Prime Minister would have been present, which would not have constituted a quorum.

sessions. The Minister and SDP, in turn, challenged the President's decision. The dispute resulted in a number of legal cases, including criminal charges against the Federation President, claiming illegalities in his acceptance of the Minister's resignation letter. It also resulted in requests to the Federation Constitutional Court to resolve disputes surrounding the validity of the resignation. I had to remind the political actors that in accordance with the rule of law, decisions of the Federation President must be respected unless they are overturned by a competent authority.

54. Regarding the complaints received in relation to the resignation controversy, the Constitutional Court of the Federation ruled first, on 29 August, confirming that the Court has exclusive jurisdiction to determine whether a decision of the President of the Federation is in accordance with the entity constitution. The Court also ruled that decisions of the entity President are presumed to be constitutional and valid until such time as the Court rules otherwise. On 9 October, the Court went on to rule that the entity President can decide on resignations submitted by a minister in the Federation Government without prior proposal from the Prime Minister of the Federation, but that a document designated as a "resignation" given to a political party cannot have legal effect. The Court avoided any ruling on the validity of the specific disputed resignation, meaning that for the time being the decision of the Federation President accepting the former Minister's resignation stands. At the same time, the Court noted that the former Minister could request that the Court rule directly on the question of his resignation, after which the Minister submitted a specific request to the Court.

Federation House of Representatives leadership changes

55. The SDP-led coalition also took the initiative to make changes to the parliamentary leadership in the Federation. At a meeting on 26 June, convened and presided over by the Deputy Speaker, the Federation House of Representatives voted to dismiss the House Speaker (SDA) and Deputy Speaker (HSP) and to replace them with members from SBB Bosnia and Herzegovina and SDP.[22] On 28 August, the Constitutional Court of the Federation ruled that the session of the House of Representatives had not been held in line with the Constitution of the Federation, thereby invalidating all decisions taken at that session. The SDA Speaker and HSP Deputy Speaker returned to their posts and at an extraordinary session of the House on 6 September, it voted once again to remove them (this time following the constitution and the rules of procedure) and to appoint a member of SBB Bosnia and Herzegovina as Speaker and a member of SDP as Deputy Speaker. The House of Representatives then held an extraordinary session on 11 September and re-adopted all the agenda items that had been passed at the unconstitutional session of 24 and 25 July.

56. Changes were also made in the Federation House of Peoples. On 3 July, the House met in extraordinary session and elected a member of HDZ Bosnia and Herzegovina as the new Speaker after voting to remove the former Speaker. These decisions were not legally challenged. The House also adopted conclusions calling

[22] At the controversial session, the 58 deputies present decided that the reason for the Speaker's absence was unknown (despite the fact that the Speaker had postponed the session) and therefore applied the rule that enables a Deputy Speaker to replace the Speaker. The 39 deputies from SDA, the Party for Bosnia and Herzegovina (SBiH), HSP and NSRZB did not attend the meeting.

for the resignations of the Federation President and one of the Vice-Presidents from SDA and requesting the Prime Minister to "propose the removal of ministers who obstruct the work of the Federation Government".

Efforts to remove the Federation President

57. On 18 July, Speakers of both Houses announced that the Federation House of Peoples alone would initiate a procedure to remove the Federation President before the Constitutional Court of the Federation. On 19 July, my Office reminded all involved that any initiative to remove the President of the Federation must be fully consistent with the procedure outlined in the Constitution of the Federation, which requires a two-thirds majority vote of each House.

58. During an extraordinary session of the House of Peoples held on 20 July, a petition against the President of the Federation was signed, reportedly containing signatures of 39 delegates. At the continuation of that session, held in Sarajevo on 24 July, the House of Peoples adopted a simple-majority decision to file a motion with the Constitutional Court of the Federation on dismissing the Federation President. Such a motion would also appear to be inconsistent with the Federation Constitution. However, despite the decision of the House of Peoples, it was never filed.

Cantonal government reconstruction

59. In June, SDP-led majorities removed SDA Ministers from the Sarajevo, Zenica, Una-Sana and Tuzla cantons and formed new governing coalitions with SBB Bosnia and Herzegovina. SDA responded immediately, mustering a majority to expel SDP ministers in Gorazde canton. In September, an SDA-led majority in Sarajevo canton passed a vote of no-confidence in the SDP-SBB Government. It is still working on forming a governing coalition.

Federation Constitutional Court judges

60. The Federation Constitutional Court may soon have only five of its nine judges. This follows the appointment of one of its six remaining judges to a post in the European Court of Human Rights on 2 October. While the number of five judges still meets the minimum requirement for a quorum, decisions of the Court must be taken by a majority of all nine justices, present or not, meaning that the Court will now effectively need to reach consensus among all five sitting members in order to pass decisions. Furthermore, it will not be able to work or pass decisions if one judge is absent. The situation highlights the serious consequences of the ongoing three-year failure of the competent Federation authorities to appoint the three missing judges.[23]

[23] The absence of these judges has incapacitated the Constitutional Court's Vital National Interest Panel and negatively affected the protection of constituent peoples in the decision-making process of vital national interest regarding Federation, Cantonal and Mostar City legislation.

The Office of the High Representative facilitates the Mostar process after the authorities of Bosnia and Herzegovina fail to agree on Court-mandated electoral changes

61. My Office is currently facilitating multi-party talks to find agreement on a way to implement the ruling of the Constitutional Court of Bosnia and Herzegovina[24] in relation to the Mostar electoral system to ensure respect for the rule of law and to enable local elections to take place. Facilitation follows the failure of competent authorities to reach agreement since the November 2010 Court ruling, thereby denying citizens living in Mostar their right to vote on 7 October.

Canton 10 government finally formed

62. A government was formed in canton 10 on 31 July 2012, thereby completing the implementation of the October 2010 general elections after nearly 22 months.

Court ruling on segregation in schools not implemented

63. A ground-breaking ruling of 27 April of the Municipal Court of Mostar ordering the Herzegovina-Neretva Canton Education Ministry to end the practice of "two schools under one roof" in the municipalities of Capljina and Stolac by 1 September has not been implemented. As a result, pupils returned to the same segregated education system at the start of the new school year.

III. Entrenching the rule of law

64. The structured dialogue on justice launched by the European Union with the authorities in Bosnia and Herzegovina established a forum where specific issues related to the functioning of rule of law are discussed. This forum, which I have welcomed warmly, continues to offer domestic politicians the opportunity to discuss their concerns about the judiciary in Bosnia and Herzegovina. My Office continues to follow developments in the judicial field, given the prominence of this theme in the Peace Agreement.

National justice sector reform strategy

65. The justice sector reform strategy in Bosnia and Herzegovina for 2008-2012 will likely be extended for an additional year, giving the authorities more time to

[24] In November 2010, in response to a challenge by the Croat caucus in the House of Peoples of Bosnia and Herzegovina, the Constitutional Court of Bosnia and Herzegovina ruled that certain provisions of the Election Law of Bosnia and Herzegovina pertaining to the Mostar electoral system were unconstitutional. The Court's ruling addressed two areas: (a) the large differences in the number of voters required to elect councillors to the City Council between Mostar's six city areas; and (b) the discriminatory treatment of voters in Mostar's central zone, who, unlike voters elsewhere in Mostar, only elect councillors from a citywide list and not from a geographical voting district. The Constitutional Court of Bosnia and Herzegovina gave the Parliamentary Assembly six months to correct the relevant provisions in the Election Law. After the deadline passed without action, the Constitutional Court of Bosnia and Herzegovina issued a supplementary ruling, on 18 January 2012, repealing the provisions of the Election Law that it had previously deemed unconstitutional. As a result, the Election Law currently only provides for the election of 17 councillors in citywide elections, whereas the Mostar city statute foresees 35 councillors.

consider a possible new strategy. Implementation of the current strategy has been extremely limited.

66. At the eighth Ministerial Conference, held in July 2012, it was decided to concentrate in the upcoming period on recommendations from the *Opinion on Legal Certainty and the Independence of Judiciary in Bosnia and Herzegovina* issued in June by the European Commission for Democracy through Law. Several issues are of special importance for implementing civilian aspects of the peace settlement and the division of competencies between the State of Bosnia and Herzegovina and its entities under its Constitution. These are legal discussions about the competencies of the State of Bosnia and Herzegovina in criminal law; a legal framework for establishment of the Appellate Court of Bosnia and Herzegovina; amendments to the Law on High, Judicial and Prosecutorial Council of Bosnia and Herzegovina; international cooperation on war crimes prosecution; and implementation of the war crimes prosecution strategy.

War crimes prosecution strategy

67. During the reporting period, the Steering Board for the Implementation of the National War Crimes Prosecution Strategy met on a regular basis and issued conclusions on the implementation rate of the strategy. One conclusion was that so far the only strategic aim that has been met was the handover by the Prosecutor's Office of data on war crimes cases that it had taken since 1 March 2003.[25] This data was necessary for the Court to decide on possible transfer of less complex cases to entity jurisdictions. The Steering Board expressed satisfaction with the rate of transfer of cases from State to entity jurisdictions, but cautioned on the need to increase staffing and the material/technical preparedness of entity prosecutors' offices and courts dealing with war crimes cases.

68. On 10 April, the European Court of Human Rights rejected the complaint of Boban Simsic against Bosnia and Herzegovina.[26] This decision was significant as it found that the application of the Criminal Code of Bosnia and Herzegovina of 2003 to war crimes cases committed during the 1990s did not violate the plaintiff's human rights, that the lack of an appellate court administratively separate from the Court of Bosnia and Herzegovina also did not violate his human rights and that there was no issue with the division of jurisdiction between the State of Bosnia and Herzegovina and entity judiciaries for war crimes cases. However, a similar complaint before the European Court of Human Rights (*Maktouf and Damjanovic vs. Bosnia and Herzegovina*) was relinquished to the Grand Chamber in July 2012 for further consideration. I have followed these cases closely as they raise issues regarding the decisions of the High Representative.[27]

---

[25] The date when the new Criminal Code of Bosnia and Herzegovina and the Criminal Procedural Code of Bosnia and Herzegovina entered into force.

[26] The applicant complained that crimes against humanity, of which he had been held guilty, had not constituted a criminal offence under national law from 1992 to 1995, and that he had not been entitled to have his second-instance judgement reviewed by a higher criminal tribunal. Lastly, he complained the State Court took over his case, unlike some other cases, from the competent entity court.

[27] Although the complaints are similar, there is an added complaint over an alleged breach of article 6, para. 1, of the Convention (hearing by an independent and impartial tribunal established by law) because the international judges were members of the adjudicating tribunal and they were appointed by the High Representative.

Public security and law enforcement

69. On 24 August, the government of Sarajevo Canton adopted a draft cantonal Law on Internal Affairs. In coordination with officials of the United States and the European Union, my Office expressed concern that the draft law had not been subject to adequate consultation with the police, that it did not sufficiently safeguard the Sarajevo Canton police from improper political control and that it would lead to disharmonized police legislation in the Federation. The Office of the High Representative and other international actors also advocated that a draft Federation law on internal affairs that is already being considered be adopted as a first measure in order to ensure harmonization with subsequent legislation in the cantons.

70. During the reporting period, there were numerous allegations that the Minister of the Interior of Sarajevo Canton had exerted inappropriate political pressure over the police, including attempts to circumvent the managerial authority of the Sarajevo Canton Police Commissioner and other intrusions into the administrative functioning of the police.

71. Following the reconstruction by SDP and SBB of the Tuzla Cantonal government, in July, the Tuzla Canton Assembly attempted to remove the entire Independent Board, which is responsible for overseeing the work of the Tuzla Canton Police Commissioner. In a coordinated approach, on 17 July, the Office of the High Representative, the United States and the European Union communicated to relevant officials that this move raised concerns of inappropriate political control over the Independent Board. In a follow-up meeting with the Office of the High Representative and the Special Representative of the European Union, the Tuzla Cantonal Assembly officials agreed to refrain from further action on removing the Independent Board.

IV. Cooperation with the International Tribunal for the Former Yugoslavia

72. During the reporting period, cooperation with the International Tribunal for the Former Yugoslavia remained satisfactory. During meetings in May and October in Sarajevo, Chief Prosecutor of the Tribunal, Serge Brammertz, expressed his concern about the implementation of the national war crimes prosecution strategy. He noted the difficult situation within the State judiciary due to constant political attacks against its institutions. A further concern was expressed over the transfer of cases from State to entity prosecutors' offices because the entity-level judiciary has not demonstrated adequate capacity to deal with existing cases, let alone the increased caseload created by the transfers. Before the transfer of cases from the State level, the entity-level judiciary already had jurisdiction for 50 per cent of the reported war crimes cases, in many of which no progress had been made. A significant number of entity-level prosecutors' offices lack a specifically dedicated department or prosecutor for war crimes cases.

73. The long awaited trial of Ratko Mladic, former commander of the Army of the Republika Srpska, started on 16 May. Mladic is accused of genocide, crimes against humanity and violations of the laws or customs of war.

74. On 28 June, the Trial Chamber of the International Tribunal for the Former Yugoslavia accepted a motion for acquittal on one of the counts against Radovan Karadzic, related to charges of genocide in seven municipalities of Bosnia and Herzegovina (Bratunac, Foca, Kljuc, Prijedor, Sanski Most, Vlasenica and Zvornik). Charges of genocide in Srebrenica remain.

V. Economy

Economic indicators

75. In its October 2012 report on macroeconomic indicators for the period from January to August 2012, the Directorate for Economic Planning of the Council of Ministers of Bosnia and Herzegovina noted continued weakening of the country's economy in the second quarter of 2012.[28] The April 2012 edition of IMF World Economic Outlook forecasts stagnation of the national economy, revising the September 2011 forecast of economic growth in 2012 to zero. The country's credit rating stabilized during the reporting period. After its decision of 3 April 2012 to downgrade its credit rating from B2 to B3 and to commence a review for further possible downgrade, Moody's Investors Service confirmed, on 10 July, a B3 sovereign rating for Bosnia and Herzegovina, giving it a stable outlook.

Challenges to the fiscal sustainability of State institutions

76. Having operated on restricted temporary financing for 17 months, the last five months of which were based on a 2011 budget, which was not adopted in line with annex IV of the General Framework Agreement for Peace (Constitution of Bosnia and Herzegovina),[29] the national institutions finally received a budget at the end of May. The Law on Budget of Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina for 2012 was adopted by the House of Representatives on 24 May and by the House of Peoples on 31 May. The 2012 budget amounts to 1.39 billion KM, of which 950 million KM will go towards financing State institutions. While this represents a 45 million KM increase over the institutions' budget for 2011, based on the execution of restricted temporary financing throughout 2011, it is 78 million KM lower than the 2010 adopted budget for the institutions, that is, 27.8 million KM lower than the executed 2010 budget.

77. At the time of budget adoption, the Parliamentary Assembly of Bosnia and Herzegovina had still not adopted amendments to the Law on Salaries and Remunerations in Institutions of Bosnia and Herzegovina, which would provide legal grounds for the planned 4.5 per cent across-the-board salary cut at the State level, or an amendment to the Constitution that would allow compensation cuts to office holders in national institutions during their mandate.[30]

78. While it is too early to assess the full implications of restricted financing for the functioning of the institutions of Bosnia and Herzegovina, there are already worrying signs. I am saddened to report that restricted financing at the State level has affected cultural institutions of national significance, which are dependent on grants from the State budget. The National Museum of Bosnia and Herzegovina closed its doors to visitors on 4 October, its 124th anniversary. The National Art Gallery closed on 1 September 2011. The Museum of Literature and Theatre is also in danger of closure. The mentioned institutions are among seven pre-war institutions[31] of national significance whose legal status has not been resolved to date.

79. Financial difficulties of State budget users and beneficiaries are likely to increase over time given the 15 June agreement of the Fiscal Council on the Global

[28] In the first eight months of 2012, exports decreased by 4.5 per cent and imports increased by 0.2 per cent over the same period last year. As a result, Bosnia and Herzegovina's foreign trade deficit increased by 5.8 per cent. Industrial production registered a general 6 per cent decrease (a 7.9 per cent decrease in the Republika Srpska and a 1.2 per cent increase in the Federation) over the same period in 2011. The average net salary in Bosnia and Herzegovina in July amounted to 827 marka (KM), an increase of 1.7 per cent compared to July of 2011, while average monthly pensions in August were 311.15 KM in the Republika Srpska and 350.68 KM in the Federation. Monthly inflation for the period from January to August was estimated at 2 per cent. In July, 545,881 persons or 43.9 per cent of the workforce were registered as unemployed, an increase by 14,823 persons or 2.8 per cent from August 2011. Based on the revised data of the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina, the Directorate for Economic Planning reports that foreign direct investment in the first half of 2012 amounted to 50.35 million KM, a decline by 73.8 per cent compared to the same period in 2011. Source: Directorate for Economic Planning of Bosnia and Herzegovina, Bosnia and Herzegovina Labour and Employment Agency, entity pension and disability insurance funds.

[29] Annex IV of the Dayton Peace Agreement (Constitution of Bosnia and Herzegovina) explicitly requires that the Council of Ministers recommend a budget to the Presidency, which then officially proposes it to the Parliamentary Assembly (article V, 3(f) and VIII,1). The proposed budget then must be adopted by the Parliamentary Assembly (article IV, 4(c) and article VIII,1). The Law on Budget may only enter into force after its publication in the *Official Gazette of Bosnia and Herzegovina* (article IV,3(h)). These constitutional provisions were not adhered to by the country's key State-level institutions in their effort to implement the 28 December 2011 political agreement of the six main political parties of Bosnia and Herzegovina on the 2011 budget, given that the Budget of Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina for 2011 did not receive the necessary parliamentary approval in accordance with the Constitution. This has undermined the constitutional roles of key State institutions and set a potentially problematic precedent by which important acts related to the institutions of Bosnia and Herzegovina, such as the budget, can be adopted outside the procedure set forth under the Constitution.

[30] Article IX, para. 2, of the Constitution of Bosnia and Herzegovina reads: "Compensation for persons holding office in the institutions of Bosnia and Herzegovina may not be diminished during an officeholder's tenure". The proposed amendment deletes this provision. The amendment in question was proposed in 2005 and adopted in both readings in the House of Representatives and in the first reading in the House of Peoples, where its second reading is pending to date.

[31] The seven institutions are: the Library for Blind and Visually Impaired Persons of Bosnia and Herzegovina, the Historical Museum of Bosnia and Herzegovina, the National Film Archive of Bosnia and Herzegovina, the Museum of Literature and Theatre of Bosnia and Herzegovina, the National and University Library of Bosnia and Herzegovina, the Art Gallery of Bosnia and Herzegovina and the National Museum of Bosnia and Herzegovina.

Framework of Fiscal Balance and Policies in Bosnia and Herzegovina for the period 2013-2015. The agreement does not appear to include all the parameters required by the Law on the Fiscal Council of Bosnia and Herzegovina, as it appears to relate only to the financing of State institutions and their share in indirect tax revenue during 2013-2015. It foresees locking State institutions into the current restricted financing levels until 2015. I fear that, potentially, this could negatively affect the functionality of State-level institutions.

New IMF standby arrangement for Bosnia and Herzegovina

80. On 15 June, the Fiscal Council decided to initiate a new arrangement with IMF. In line with the decision and the agreement reached with the IMF mission in July, authorities at all levels worked efficiently towards fulfilling the agreed conditions ("prior actions")[32] to ensure the approval of the standby arrangement. On 26 September, following verification of the country's successful completion on the agreed "prior actions", the IMF Executive Board approved a 24-month 338.2 million special drawing rights[33] standby arrangement for Bosnia and Herzegovina. The Board's decision enabled the initial disbursement of 50.73 million SDR,[34] with the remainder to be phased in over the arrangement duration, subject to successful completion of quarterly reviews.

81. On 31 August, as part of the "prior actions", the Governing Board of the Indirect Taxation Authority unanimously adopted decisions on the settlement of indirect tax revenue allocation for 2010, 2011 and 2012. As a result of the total debt settlement, the Federation will reimburse the Republika Srpska for 12.9 million KM via the Federation's share in indirect tax revenue between 3 September and 31 December 2012. Entity debt settlement for 2010 and 2011 is a long-standing sore point that had in the past triggered both lawsuits and challenges to the indirect taxation system, and the unanimous agreement of the Governing Board on this matter represents a major breakthrough, as well as an indication of the serious fiscal difficulties faced by both entities.

82. In September, the Federation Parliament adopted an entity budget rebalance for 2012 in the amount of 1.99 billion KM as well as amendments to the Law on Banking Agency that delete provisions allowing for the dismissal of the Agency's Director, Deputy Director and Board members if the Parliament does not adopt the Agency's annual report within six months after the end of the reporting year.

83. The National Assembly of the Republika Srpska also adopted an entity budget rebalance for 2012 in September in the amount of 1.81 billion KM.

VI. Return of refugees and displaced persons

84. Sarajevo hosted a regional donors' conference on 24 April in support of the regional refugee return programme, which collected 300 million euros from various donor countries. A further 81 million euros have been put forward by the four countries in the region. The main priority in Bosnia and Herzegovina, people currently living in collective centres, will not be completely addressed by this programme and the national authorities will need to redouble their efforts to resolve this pressing and long outstanding humanitarian issue.

[32] These concern the adoption of rebalanced budgets in both entities, the settlement of indirect tax revenue between the entities and the repeal of the disputed amendments to the Law on Banking Agency of the Federation.

[33] This is about 405.3 million euros or about 520.6 million United States dollars.

[34] This is about 60.8 million euros or 78.1 million United States dollars.

VII. Media development

85. During the reporting period, the authorities of both Bosnia and Herzegovina and the Federation focused their efforts on changing procedures governing appointments to the Communications Regulatory Agency and public broadcasters, currently designed to prevent political influence in the appointment procedure. At the State level, the Council of Ministers of Bosnia and Herzegovina sought to address the long-overdue appointment of the governing body of the Agency by adopting amendments to the Law on Communications that entered parliamentary procedure in August. Regrettably the proposed amendments will neither enable the unblocking of the appointment procedure nor ensure its transparency. At the Federation-level, the Parliament published a vacancy for three members of the Board of Governors of the Public Broadcasting Service of the Federation despite the fact that the law envisages appointment of only one member per year. This provision is meant to ensure institutional memory while at the same time preventing political influence. On 26 September, the Representative of the Organization for Security and Cooperation in Europe on Freedom of the Media submitted recommendations to the relevant authorities in Bosnia and Herzegovina outlining the way to address legal reforms necessary to ensure independence of the public broadcasting regulator and the broadcasters.

86. Political influence over public media, especially television, in both entities continues to be problematic. During the reporting period, the government of the Republika Srpska continued to allocate funds to entity print and electronic media. As part of the September budget rebalance, the National Assembly of the Republika Srpska more than doubled Government grants to the media from 1.4 million KM to 3.6 million KM.

87. During the period from 1 January to 10 September, the Free Media Helpline registered 39 violations of media freedoms and journalists' rights, including an increase in cases of pressure and threats by politicians and other public figures against journalists compared to the previous year.

VIII. Defence matters

88. On 18 September, a newly constituted Commission for NATO Integration of Bosnia and Herzegovina met for the first time. The body replaced the previous NATO coordination team. The Commission brings together the Deputy Ministers for Foreign Affairs, Security and Defence of Bosnia and Herzegovina and other higher ranking ministry and directorate officials to discuss issues related to the NATO integration process for Bosnia and Herzegovina.

89. On 8 October, the President of the Republika Srpska sent an initiative to the National Assembly of the Republika Srpska to discuss the abolishment of the Armed Forces of Bosnia and Herzegovina. He called on the National Assembly to task the

Government and the institutions of Republika Srpska, as well as the representatives from Republika Srpska in the joint bodies of Bosnia and Herzegovina to prepare proposals for amending the existing documents which regulate this area at the State level.

90. In the press release announcing this initiative in the parliament of Republika Srpska, the President claimed "the competence for defence is not the competence of Bosnia and Herzegovina and neither is the issue of the military, and regardless of the activities to date, this was not the subject of change of the Constitution of Bosnia and Herzegovina as annex 4 of the International Dayton Peace Accords, and therefore there are no constitutional grounds for Bosnia and Herzegovina's competence over defence matters". He also cited financial grounds for abolishing the Armed Forces.

91. By way of background, the two entities signed an agreement in 2005, whereby they agreed to transfer (pursuant to article III (5) a) of the Constitution) all responsibilities of the entities in the field of defence to the institutions of Bosnia and Herzegovina, and recognized that all responsibilities transferred by the entities would be exercised fully and exclusively by the institutions of Bosnia and Herzegovina. As a result, the exclusive competence of Bosnia and Herzegovina for defence matters results from the Constitution and from a transfer agreement signed under it.

92. During the summer, the Armed Forces provided invaluable support to the civil authorities in combating numerous wildfires across the country. In mid-September, both the Minister of Defence of Bosnia and Herzegovina and his deputies made the point that the Armed Forces had to be adequately funded if the civil authorities were to receive such support in the future. This is part of a wider challenge of shortfalls in funding for the Armed Forces.

IX. European Union Military Force

93. In early April, the European Union agreed to reduce the size of the European Union military operation in Bosnia and Herzegovina. By 1 September, the force had been halved to around 600 personnel. Its headquarters and peace-enforcement capability remain based in the Sarajevo area. A reduced number of liaison and observation teams continued to be present in parts of the country. EUFOR also continued to work closely with the Armed Forces of Bosnia and Herzegovina.

94. To counterbalance the reduction of forces in theatre, and in an effort to continue to contribute to maintaining a safe and secure environment in Bosnia and Herzegovina, from October 2012 onwards, some member States of the European Union will allocate reserve forces to EUFOR as out-of-theatre reserves, ready to deploy at short notice if required.

95. EUFOR plays a central role in the efforts of Bosnia and Herzegovina to maintain a safe and secure environment. This, in turn, assists my Office and other international organizations to fulfil their respective mandates. As such, EUFOR remains a vital factor of stability in Bosnia and Herzegovina. Given the negative trends described in this report, I consider it essential that EUFOR retain an executive mandate to provide critical reassurance to citizens.

X. European Union Police Mission

96. The European Union Police Mission in Bosnia and Herzegovina, the first mission under the European Security and Defence Policy, completed its mandate on 30 June 2012. European Union support to the rule of law in Bosnia and Herzegovina will continue through the instrument for pre-accession assistance and the office of the Special Representative of the European Union.

XI. Future of the Office of the High Representative

97. The Steering Board of the Peace Implementation Council met at the level of political directors on 22 and 23 May 2012, again expressing its concern over the ongoing failure to address the remaining objectives and conditions for the closure of the Office of the High Representative. The next meeting of the Steering Board is scheduled for 29 and 30 November 2012.

98. For the tenth consecutive year, my Office continued the trend of fiscal responsibility resulting in further budget reductions. Including the closure of the Brcko office, we reduced our overall budget by more than 13 per cent and the number of staff by 12 per cent relative to the previous year. As set out in the Peace Agreement, it remains essential that I have the staff that are necessary for me to meet my mandate.

XII. Reporting schedule

99. In keeping with the proposals of my predecessor to submit regular reports for onward transmission to the Security Council, as required by Council resolution 1031 (1995), I herewith present my eighth regular report. Should the Secretary-General or any Security Council member require information at any other time, I would be pleased to provide an additional written update. The next regular report to the Secretary-General is scheduled for April 2013.

United Nations S/2012/814

Security Council

Distr.: General
7 November 2012

Original: English

Letter dated 6 November 2012 from the Permanent Representative of India to the United Nations addressed to the Secretary-General

As you are aware, during its presidency of the Security Council in the month of November 2012, India has scheduled an open debate to discuss the threat to international peace and security by acts of maritime piracy. In this context, India has prepared a concept note (see annex).

I should be grateful if the present letter and its annex were distributed as a document of the Security Council

(*Signed*) H. S. **Puri**

12-57738 (E) 091112

Please recycle

Annex to the letter dated 6 November 2012 from the Permanent Representative of India to the United Nations addressed to the Secretary-General

International peace and security: piracy

Concept note

Maritime piracy and armed robbery at sea have become a major concern for the international community, in particular, for shipowners, seafarers, international organizations, insurance companies and Governments alike. Despite international efforts in recent years to contain this challenge, maritime piracy has remained a major problem with economic, commercial, humanitarian and security dimensions. Several of the major maritime trade routes of the world, in particular the Gulf of Aden and the Gulf of Guinea, continue to be affected by piracy, hampering international trade and commerce. In the last couple of years, the plight of seafarers taken hostage and held in captivity by pirates has also become a matter of serious concern for the international community.

There are many factors that have contributed to the problem of piracy. These include a vast area of maritime space with lax maritime regulations, the existence of organized crime syndicates, the presence of radical, politically motivated groups in the concerned region, the lack of maritime demarcation, overfishing and political instability in Somalia, to name a few.

Despite the action taken by the world's navies against piracy off the coast of Somalia, the number of pirate attacks remains alarmingly high. Several reports indicate that piracy is being developed as a successful business model by piracy networks, their financiers and supporters. Pirates are able to operate successfully in areas much beyond the coast of Somalia, exploiting security shortcomings in the maritime environment and taking benefit of the political, social and economic developments conducive to the occurrence of such attacks.

The attention of the Security Council regarding the issue of piracy has been primarily focused on developments relating to Somali pirates. Legal issues have been a key focus for the Council in relation to Somali piracy and, in particular, how to ensure the prosecution of suspected pirates and imprisonment in the case of convictions, since few countries are willing to take this on. Of late, the Security Council has also paid attention to piracy in the Gulf of Guinea. The Council has highlighted the need for international cooperation, to tackle the menace of piracy, including through capacity-building of States in the region. Given that piracy is often a transnational crime, with pirates operating across national borders, the level of cooperation between Governments, navies and law enforcement agencies has an important role to play. In this regard, it is also important to keep updating the area considered as high risk for piracy, so that the scarce resources of Governments and others used in counter-piracy measures are used more judiciously.

There is a general recognition in the Security Council that the problem of maritime piracy and armed robbery at sea cannot be tackled by military means alone; the problems on shore, ranging from underdevelopment and poverty to the presence of financers and kingpins, also need to be addressed in a comprehensive

and holistic manner. However, the Council has dealt with the problem of piracy with a more pronounced regional perspective rather than in a wider global context.

The objective of the open debate on 19 November 2012 is to take account of the efforts that the Council has made so far in countering piracy in a holistic manner, with a special focus on the issue of seafarers being held hostage by the pirates, including their welfare, both while in captivity and after their release.

India will propose a presidential statement for the Council's consideration.

United Nations S/2012/815

Security Council

Distr.: General
8 November 2012

Original: English

Note by the President of the Security Council

At its 6856th meeting, held on 8 November 2012, the Security Council considered its draft report to the General Assembly covering the period from 1 August 2011 to 31 July 2012. The Council adopted the draft report without a vote.

12-57899 (E) 081112

Please recycle